

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

JONATHON M. MARK,

Plaintiff,

v.

Case No. 05-C-0586

JOHN HUSZ, *et al.*,

Defendants.

ORDER

Plaintiff Jonathon M. Mark brought a civil rights action pursuant to 42 U.S.C. § 1983. By its Order of June 6, 2005, the court dismissed plaintiff's original complaint for failure to comply with Fed. R. Civ. P. 8(a) and 10(b). Plaintiff thereafter filed an amended complaint, which the court gave him until November 4, 2005, to serve. On October 17, 2005, plaintiff wrote to the court to inform it that he had not effected service and to request an extension of the time therefor. The court obliged by extending the deadline for service to January 3, 2006, but warned that failure to make service by that date would result in dismissal without prejudice. (Order of November 10, 2005.) Plaintiff thereafter filed two notices, dated December 24, 2005, that indicated that plaintiff intended to mail copies of the complaint and summons to the defendants on December 27, 2005. On February 1, 2006, this court dismissed the action, without prejudice, for failure to prosecute.

Plaintiff has moved for reconsideration of the court's Order of Dismissal of February 1. He has also filed a motion for summary judgment, which the court construes as a motion for a default judgment. In his motion for reconsideration, plaintiff states that he sent two copies of the

complaint, along with waiver forms, to the assistant attorney general. Plaintiff argues that this constitutes service under Wis. Stat. § 801.11(3), which permits service

[u]pon the state, by delivering a copy of the summons and of the complaint to the attorney general or leaving them at the attorney general's office in the capitol with an assistant or clerk.

The State of Wisconsin, however, is not the defendant in this case. The defendants are individuals, and they must be served under Wis. Stat. § 801.11(1), which provides that service upon a natural person is made:

(a) By personally serving the summons upon the defendant either within or without this state.

(b) If with reasonable diligence the defendant cannot be served under par. (a) , then by leaving a copy of the summons at the defendant's usual place of abode:

1. In the presence of some competent member of the family at least 14 years of age, who shall be informed of the contents thereof;

1m. In the presence of a competent adult, currently residing in the abode of the defendant, who shall be informed of the contents of the summons; or

2. Pursuant to the law for the substituted service of summons or like process upon defendants in actions brought in courts of general jurisdiction of the state in which service is made.

(c) If with reasonable diligence the defendant cannot be served under par. (a) or (b), service may be made by publication of the summons as a class 3 notice, under ch. 985, and by mailing. If the defendant's post-office address is known or can with reasonable diligence be ascertained, there shall be mailed to the defendant, at or immediately prior to the first publication, a copy of the summons and a copy of the complaint. The mailing may be omitted if the post-office address cannot be ascertained with reasonable diligence.

(d) In any case, by serving the summons in a manner specified by any other statute upon the defendant or upon an agent authorized by appointment or by law to accept service of the summons for the defendant.

Nothing in petitioner's motion indicates that he has effected service by any of the means identified in Wis. Stat. § 801.11(1). Nor has the court received waivers of service from any of the defendants. The court therefore declines to reconsider its Order of Dismissal of February 1. In light of plaintiff's failure to effect service, no cause exists for entry of a default judgment.

IT IS THEREFORE ORDERED that plaintiff's motion for summary judgment (Docket #13) is **DENIED**.

IT IS ALSO ORDERED that plaintiff's motion for reconsideration (Docket #14) is **DENIED**.

Dated this 10th day of February, 2006.

s/ William C. Griesbach
William C. Griesbach
United States District Judge